

No. 83-1531

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In The
Supreme Court of the United States

October Term, 1983

DONREY COMMUNICATIONS COMPANY, INC. d/b/a
DONREY OUTDOOR ADVERTISING COMPANY,

Petitioner,

vs.

CITY OF FAYETTEVILLE, ARKANSAS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE
SUPREME COURT OF ARKANSAS

PETITIONER'S REPLY MEMORANDUM

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PETITIONER'S REPLY MEMORANDUM

The City of Fayetteville, Arkansas (hereinafter, the Respondent), in its Brief in Opposition, argues that this Court lacks jurisdiction to review the result below, allegedly because the decision of the Arkansas Supreme Court is based on adequate and independent state grounds. Without doubt, this Court may refuse to issue a writ of certiorari where a state court's decision rests on adequate

and independent nonfederal grounds. Admittedly, the court below held that Arkansas law did not require the Petitioner to be compensated for the forced removal of its signs. Contrary to the Respondent's claims, however, this finding is neither adequate to justify the result below nor independent of the federal rights at stake.¹

To be adequate, the nonfederal grounds involved must be of sufficient breadth to support the state court's decision. *Abie State Bank v. Bryan*, 282 U.S. 765, 51 S.Ct. 252, 75 L.Ed. 690 (1931). For example, the Court will not disturb a state court finding that a contract is invalid under federal law if the state court had also ruled that the contract would be invalid under state law. *Fox Film Corporation v. Muller*, 296 U.S. 207, 56 S.Ct. 183, 80 L.Ed. 158 (1935). Likewise, the Court will not require state courts to recognize federal rights not raised in accordance with reasonable state procedural requirements. *Nevada-California-Oregon Railway v. Burrus*, 244 U.S. 103, 37 S.Ct. 536, 61 L.Ed. 1019 (1917). A simple analogy demonstrates that a different result should prevail where two substantive state and federal statutes covering the same field are invoked. If a criminal defendant were to argue a police search of his person violated both state procedural requirements and the Fourth and Fourteenth Amendments to the United States Constitution, a state court opinion finding no state law violation but ignoring the federal claims would not be immune from this Court's scrutiny.

¹The Petitioner stands by the First Amendment issues raised in its *Petition for a Writ of Certiorari*, pp. 9-14, but believes it unnecessary to respond to the *Brief in Opposition* on these points.

Simply put, while the Arkansas Supreme Court is free to interpret the Arkansas Highway Beautification Act, this Court cannot thereby be deprived of its power to interpret the Federal Highway Beautification Act, codified at 23 U.S.C. § 131 et seq.

The issues raised by the Petitioner under 23 U.S.C. § 131 are not independent of the issues decided by the court below under the Arkansas Highway Beautification Act. The preamble to the Arkansas law, Act 640 of 1967, codified at Ark. Stat. Ann. § 76-2501 et seq. (Repl. 1981), recognized that state legislation was necessary because:

[T]he Congress of the United States has enacted legislation in the Highway Beautification Act of 1965 which will cause substantial losses in federal-aid highway funds apportioned to Arkansas on or after January 1, 1968, unless the Arkansas General Assembly enacts conforming legislation . . . to provide for the payment of full and just compensation upon the removal and relocation of outdoor advertising signs. . . .

A subsequent amendment, Act 999 of 1975, codified at Ark. Stat. Ann. § 76-2504.1 (Repl. 1981), contained a similar preamble, leaving no doubt that the intent of the legislature was to implement the Federal Highway Beautification Act.² This has been acknowledged by the Arkansas Supreme Court. *See, Yarbrough v. Arkansas State Highway Commission*, 260 Ark. 161, 539 S.W.2d 419 (1976).

The Respondent cites *National Advertising Company v. City of Ashland*, 678 F.2d 106 (9th Cir. 1982) to argue

²For the convenience of the Court, the relevant Arkansas Statutes have been reproduced in an appendix to this Memorandum.

that only state questions could have been before the Arkansas Supreme Court since the Petitioner lacked standing to raise a claim under 23 U.S.C. § 131(g). *Brief in Opposition*, p. 6. The Petitioner disagrees with the premise of this argument. The Ninth Circuit held that a billboard company could not seek damages for the forced removal of its signs by local authorities who apparently were willing to accept the statutory penalty. This is a wholly different issue than the Petitioner's simple desire to have its fate determined by local authorities who understand the consequences of their actions under 23 U.S.C. § 131(g). More important is the questionable validity of the Ninth Circuit's decision. At common law, a party injured by another's violation of a statute could exercise a private cause of action.³ The Ninth Circuit ignored this tradition. Two of the cases the Ninth Circuit relied on, *Middlesex County Sewerage Authority et al. v. National Sea Clammers Association et al.* 453 U.S. 1, 101 S.Ct. 2615, 69 L.Ed. 2d 453 (1981) and *California v. Sierra Club*, *supra*, involved citizen groups seeking to enforce environmental laws. In cases like this one, where the plaintiff belonged to the specific group the law was intended to protect, a different result has been reached. *United States v. Mitchell*, — U.S. —, 103 S.Ct. —, 77 L.Ed.2d 580 (1983); *Jose P. et al. v. Ambuch et al.* 557 F.Supp. 1230 (E.D.N.Y. 1983); *Carter v. Independent School District No. 6 et al.* 550 F.Supp. 172 (W.D. Okla. 1981).

The Respondent seems to suggest that the state court's decision is defensible as an election by the state

³*California v. Sierra Club*, 451 U.S. 287, 101 S.Ct. 1775, 68 L.Ed.2d 101 (1981) (Stevens, J., concurring). We note in passing that at the time of this decision, the Court had reversed Courts of Appeals in five of the last six statutory implied-right-of-action cases it had reviewed. *California v. Sierra Club*, *supra* (Rehnquist, J., concurring).

to accept reduced federal highway funds. *Brief in Opposition*, p. 8. Yet, the language quoted above and the preamble to Act 999 demonstrate an election by the General Assembly that the State of Arkansas remain eligible for full federal aid. As one might expect, the court below expressed no quarrel with this policy. Whether the court itself knew its decision would jeopardize federal aid to Arkansas is unclear, but it was informed that in the opinion of the Federal Highway Administration, 23 U.S.C. § 131 made just compensation a prerequisite for full federal funding. *Petition for Writ of Certiorari*, pp. 70-74.

The legislative history of the Act supports this conclusion. When the Act was passed, Report No. 1084 of the House Committee on Public Works stated that, "The Committee feels strongly that in all equity and fairness, compensation must be paid to those individuals who will lose their signs." 1965 *U.S. Code & Adm. News*, p. 3717. After the Federal Highway Administration issued a memorandum denying compensation was required for removal of signs which had become nonconforming, Congress passed the Surface Transportation Act of 1978 to "clarify existing law by clearly setting forth that just compensation must be paid." Report No. 95-1485 of the House Committee on Public Works and Transportation, 1978 *U.S. Code & Adm. News*, p. 6592.⁴

⁴The Fifth and Fourteenth Amendment issues involved here, another possible basis for Supreme Court review, are clear. The 1965 Act as proposed by the Administration contained no provision for compensation. During the Senate debate, both Senators Dirksen and Randolph agreed that proposed amendments to require compensation represented "a restatement of principles laid down in Article (sic) V of the Bill of Rights." One such amendment was eventually adopted. 111 *Cong. Rec.* 24126. See also, Cunningham, "Billboard Control Under the Highway Beautification Act of 1965," 71 *Mich. Law Rev.* 1296 (1973).

The present position of the Federal Highway Administration highlights the fallacy in the Respondent's argument that this Court lacks jurisdiction since the Arkansas Supreme Court did not expressly hold that 23 U.S.C. § 131 (g) did not entitle the Petitioner to just compensation. The effect of the court's action, upholding a trial court which had ruled that 23 U.S.C. § 131 did not require compensation (*Petition for Writ of Certiorari*, p. A-30), squarely contradicts the views of the Federal Highway Administration, as well as those of the California Supreme Court. *See, Metromedia, Inc. v. City of San Diego*, 610 P. 2d 409 (Cal. 1980). The federal question was properly before the state court. *Petition for Writ of Certiorari*, p. 5. While the court did not expressly construe 23 U.S.C. § 131, its completely unexplained failure to address the federal issue should not rob this Court of its jurisdiction in light of the effects of the lower court's decision.⁵

⁵The Respondent also suggests this Court lacks jurisdiction under 28 U.S.C. § 1257(3) since the result below does not draw into question the validity of a state statute under federal law. This suggestion is both irrelevant and incorrect. The Petition raised claims under 28 U.S.C. § 131 and the First Amendment, over which this Court has jurisdiction pursuant to that portion of 28 U.S.C. § 1257(3) governing any right asserted under federal law. Although the Petitioner has invoked this Court's jurisdiction to protect its rights under 23 U.S.C. § 131 and the First Amendment, the compatibility of the Arkansas Highway Beautification Act with 23 U.S.C. § 131 would also create a basis for Supreme Court review. The Arkansas Highway Beautification Act, as interpreted by the majority below, cannot be reconciled with its federal counterpart. The purpose of the state legislation was to comply with federal requirements for highway funding. Since the Arkansas Supreme Court has held that the state statute does not guarantee the Petitioner just compensation, although the correct view of the federal statute would, the state statute, as interpreted, asserts a prerogative which federal law prohibits—the right to deny compensation without having federal funds reduced.

The doctrine of Supreme Court abstention in cases involving adequate and independent state grounds is rooted in the traditional ban on advisory opinions. The Court has historically refused to correct erroneous local views of federal law if, because of state law, the result reached by the lower court would not be affected. *Herb v. Pitcairn*, 324 U.S. 117, 65 S.Ct. 459, 89 L.Ed. 789 (1945). In the present case, however, the state legislature has ordained that Arkansas should comply with federal requirements for highway assistance. If, therefore, the Petitioner's view of 23 U.S.C. § 131 is correct, the result below must be reversed. In fact, the court's refusal even to acknowledge Petitioner's § 131 argument should be grounds for summary reversal.⁶

Respectfully submitted,

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⁶Petitioner's Rule 28.1 disclosure appears at *Petition for Writ of Certiorari*, p. A-194.

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APPENDIX

76-2501. *Title of act.*

This act [§§ 76-2501 — 76-2521] may be called the Arkansas Highway Beautification Act. [Acts 1967, No. 640, § 1, p. 1176.]

Preamble. Acts 1967, No. 640 contained a preamble which read:

"Whereas, the Congress of the United States has enacted legislation in the Highway Beautification act of 1965 which will cause substantial losses in federal-aid highway funds apportioned to Arkansas on or after January 1, 1968, unless the Arkansas General Assembly enacts conforming legislation (a) to regulate the erection and maintenance of outdoor advertising signs, displays and devices in areas adjacent to the federal-aid Interstate and Primary Systems; (b) to regulate the establishment, use and maintenance of junkyards in such areas; and (c) to provide for the payment of full and just compensation upon the removal and relocation of outdoor advertising signs and junkyards; and

"Whereas, the Congress of the United States has made available additional federal funds for use in landscape and roadside developments within federal-aid highway rights of way and for acquisition of interests and improvement of strips of land necessary for the restoration, preservation and enhancement of scenic beauty adjacent to such federal-aid highways."

. . .

**ARTICLE I—CONTROL OF
OUTDOOR ADVERTISING**

76-2502. *Advertising control — Declaration of policy.*

The General Assembly finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to certain sections

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of the National System of Interstate and Defense, and Federal-aid Primary, and other State Highways designated by the Commission in the Arkansas State Highway System shall be controlled in accordance with the terms of this Act [§§ 76-2501 — 76-2521] and regulations promulgated pursuant thereto, in order to protect the public interest, to promote the public health, safety, and welfare, and to preserve natural beauty, to promote the reasonable, orderly and effective display of outdoor advertising in the State of Arkansas.

The State of Arkansas hereby finds and declares that the removal of certain directional signs, displays, and devices in certain specified areas lawfully erected under State law in force at the time of their erection which do not conform to the requirements of Subsection (c) of 23 U.S.C. 131, which provide directional information about goods and services in the interest of the traveling public, and which were in existence on May 6, 1976, would work a substantial economic hardship in such defined areas. [Acts 1967, No. 640, Art. 1, § 1, p. 1176; 1977, No. 386, § 1, p. 795.]

. . .

76-2503. *Definitions.*

As used in this Article [§§ 76-2502 — 76-2512], the term:

(a) "Outdoor advertising" means any outdoor sign, display, device, figures, painting, drawing, message, plaque, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informational contents of which is visible from any place on the main traveled-way of the Interstate, or Primary Highways.

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(b) "Safety rest area" means an area or site established, operated, and maintained within or adjacent to the right-of-way by or under public supervision or control, for the convenience of the traveling public.

(c) "Information center" means an area or site established, operated and maintained at a safety rest area for the purpose of informing the public of places of interest within the State of Arkansas and providing such other information as the Commission may deem desirable.

(d) "Interstate System" or "Interstate" in this Article, and in Article II, means that portion of the National System of Interstate and Defense Highways located within this State, as officially designated or as may hereafter be so designated by the Arkansas Highway Commission, and approved by the Secretary of Transportation, pursuant to the provisions of Title 23 of the United States Code.

(e) "Primary System" or "Primary" in this Article, and in Article II, means that portion of the Federal-aid Primary System located within this State, as officially designated or as may hereafter be designated by the Arkansas Highway Commission and approved by the Secretary of Transportation, pursuant to the provisions of Title 23 — Highways, United States Code.

(f) "Motorist services directional sign" means a sign giving directional information about goods and services in the interest of the traveling public, including but not limited to:

(1) places of public lodging;

(2) places where food is served to the public on a regular basis;

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(3) places where automotive fuel or emergency automotive repair services, including truck stops, are regularly available to the public[;]

(4) educational institutions;

(5) places of religious worship;

(6) public or private recreation areas, including campgrounds, resorts and attractions, natural wonders, wildlife and waterfowl refuges, and nature trails;

(7) plays, concerts and fairs;

(8) antique shops; and

(9) agricultural products in a natural state, including vegetables and fruits. [Acts 1967, No. 640, Art. 1, § 2, p. 1176; 1977, No. 386, § 2, p. 795.]

Compiler's Notes. The bracketed semicolon at the end of subdivision (f)(3) was inserted by the compiler.

76-2504. *Regulation of outdoor advertising.*

The erection and maintenance of outdoor advertising signs, displays, and devices in areas 660 feet in width; from the nearest edge of any right of way of any Interstate, Primary, or other State Highway designated by the Highway Commission shall be regulated in order to protect the public investment in such highways, to promote the public safety and welfare in the use of such highways, to encourage the recreational value of public travel, and to preserve the natural beauty along such highways. Therefore, after the effective date [June 29, 1967] of this Act [§§ 76-2501 — 76-2521], no outdoor sign, display or device shall be erected in such areas except as hereinafter provided and in accordance with regulations promulgated by

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the State Highway Commission, hereinafter called the Commission. [Acts 1967, No. 640, Art. 1, § 3, p. 1176.]

76-2504.1. *Limitations.*

Notwithstanding any other provision of Section 3 [§ 76-2504] of Act 640 of 1967, effective July 1, 1975, signs, displays and devices which are located more than 660 feet from the nearest edge of the right of way of Interstate and Primary highways, outside of urban areas, visible from the main traveled way of such highways, and erected with the purpose of their message being read from such main traveled way, shall be limited to:

(a) Directional and other official signs as defined herein;

(b) Signs advertising the sale or lease of property on which they are located;

(c) Signs advertising activities conducted on the property on which they are located;

(d) Signs, displays and devices which locate, identify, mark or warn of the presence of pipelines, utility lines or rail lines and appurtenances thereto; including, but not limited to, markers, used in maintenance, operation, observation and safety. [Acts 1975, No. 999, §1, p. 2639.]

Preamble. Acts 1975, No. 999 contained a preamble which read:

"Whereas, the Congress of the United States has enacted legislation by amending the Highway Beautification Act of 1965 which will cause substantial losses in Federal-Aid Highway Funds apportioned to Arkansas on or after July 1, 1975, unless the Arkansas General Assembly enacts conforming legislation:

"(a) Regulating the erection and maintenance of outdoor advertising signs, displays and

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devices which are located more than 660 feet off the nearest edge of the right of way of Interstate and Primary or any other state highway designated by the Arkansas State Highway Commission, located outside urban areas, visible from the main traveled way of such highways and erected for the purpose of their message being read from such main traveled way;

“(b) Providing removal and compensation authority for signs lawfully erected beyond 660 feet which do not conform to the provisions of this Act.”

Cross-References. Highway Beautification Act of 1965, 23 U.S.C. §§ 131, 131 note and 136.

76-2505. *Commission to regulate.*

The Commission shall, after survey to determine existing outdoor advertising structures in this state, and after public hearing, determine customary use in the display of outdoor advertising in this state with regard to size, lighting and spacing in areas zoned commercial or industrial and in unzoned areas used for commercial or industrial purposes. The definition of an unzoned commercial or industrial area shall be determined by agreement between the Commission and the Secretary of Transportation but shall be no more restrictive than that required by Title 23 of the United States Code [U.S.C., tit. 23]. The Commission shall then adopt and promulgate regulations governing the issuance of permits for the erection and maintenance of outdoor advertising coming within the purview of this Act [§§ 76-2501—76-2521], consistent with the safety and welfare of the traveling public, and as may be necessary to carry out the policy of the State declared in this Act consistent with customary usage, the purposes of this Act, and in agreement with the Sec-

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retary of Transportation. [Acts 1967, No. 640, Art. 1, § 4, p. 1176].

76-2505.1' *Power of removal—Compensation.*

The Arkansas State Highway Commission is authorized and empowered to require the removal of all outdoor advertising signs, displays and devices which do not conform to the provisions of this Act [§§ 76-2504.1, 76-2505.1, 76-2505.2] and which are lawfully erected beyond 660 feet off the nearest edge of the right of way, located outside of urban areas, visible from the main traveled way of the Interstate, Primary, or any other state highway designated by the Arkansas State Highway Commission, and erected with the purpose of their message being read from such main traveled way, and which right may be enforced by means of a mandatory injunction or other appropriate remedy, provided, however, that just compensation shall be paid upon the removal of signs, devices and displays that were lawfully erected beyond 660 feet of the right of way line of the Interstate, Primary or other State Highways; which compensation shall be paid for the taking from the owner of such sign, display or device, and the taking of all right of title, leasehold, and interest in such sign, display or device, and the taking from the owner of the real property on which the sign, display or device is located, of the right to erect and maintain such signs, displays and devices thereon. [Acts 1975, No. 999, § 2, p. 2639.]

Compiler's Notes. Section 1 of Acts 1975, No. 999 is compiled as § 76-2504.1.

76.2505.2. *Nonconforming advertising devices—Remedy.*

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The General Assembly finds and declares that outdoor advertising signs, displays or devices which are located more than 660 feet off the nearest edge of the right of way, located outside of urban areas, visible from the main traveled way of the Interstate, Primary, or other state highway designated by the Arkansas State Highway Commission, and erected for the purpose of their message being read from such main traveled way, and which do not conform to the provisions of this Act are nonconforming advertising devices; therefore, the right is conferred upon the Commission to enforce the provisions of this Act by means of restraining order, mandatory injunction, or other appropriate remedy for the abatement of such nonconforming advertising devices, displays or signs. [Acts 1975, No. 999, § 3, p. 2639.]

Emergency. Section 4 of Acts 1975, No. 999, read: "It is hereby found and declared that the strict enforcement of this Act is necessary to prevent the erection of signs, displays and devices beyond the present legal limitations and visible from the traveled right of way of the Interstate, Primary and other State Highways; that if this Act is not placed in effect forthwith, the State of Arkansas will lose substantial Federal funds for failure to comply with the Federal-Aid Highway Amendment of 1974; that the immediate enforcement of this Act is required for the public health, safety and welfare. Therefore, it is declared, for these reasons, that an emergency exists and this Act, being essential for the preservation of the public peace, safety and welfare, shall take effect and be in force from and after its passage and approval." Approved April 11, 1975.

76-2505.3. *Legislative intent and purpose.*

It is the legislative intent and purpose of this Act [§§ 76-2505.3—76-2505.6] to specifically define a certain

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term used in the agreement entered into between the Arkansas Highway Commission and the Secretary of Transportation pursuant to the authority granted in Act 640 of 1967 [§§ 76-2501—76-2521], as amended, particularly the term "land predominantly used for residential purposes" as that term is used in enumerating exclusions in the definition of "unzoned commercial, business or industrial areas," in order to clarify the terms of agreement and to enable the Highway Commission to more effectively and efficiently and uniformly administer the provisions of Act 640 of 1967, as amended, as implemented by the agreement entered into between the Commission and the Secretary of Transportation.

It is further the intent and purpose of this Act to require the Commission to act on each application for a permit for the erection and maintenance of outdoor advertising coming within the purview of Act 640, within sixty (60) days after such application is filed with the Commission to assure the prompt disposition of such applications and to avoid the unnecessary hardship and expense to applicants which could result from unreasonable delay in taking action on such applications. [Acts 1979, No. 735, § 1, p. 1638.]

Preamble. Acts 1979, No. 735 contained a preamble which read:

"WHEREAS, Act 640 of 1967, as amended, is designed to provide for the reasonable and orderly regulation of the erection and maintenance of outdoor advertising signs and devices in areas adjacent to the National System of Interstate and Defense Highways, Federal Aid Primary Highways and other State Highways, in conformity with the provisions of U. S. Code Title 23, Section 131; and

"WHEREAS, Act 640 authorized the Arkansas Highway Commission to enter into appropriate agree-

ment with the Secretary of Transportation concerning the regulation of outdoor advertising along said highways to assure proper implementation of and conformity with the provisions of U. S. Code Title 23, Section 131; and

"WHEREAS, the Commission has entered into such agreement with the Secretary but such agreement does not adequately define certain terms used in the agreement including the term "land predominately used for residential purposes," and a more specific definition of this term is necessary to enable the Commission to effectively and efficiently implement and carry out the provisions of the agreement,

NOW THEREFORE,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:"

76-2505.4. *Land predominantly used for residential purposes—Defined.*

The following term used in the agreement entered into between the Arkansas Highway Commission and the United States Secretary of Transportation pursuant to the provisions of Act 640 of 1967 [§§ 76-2501—76-2521], as amended, shall have the following meanings:

(a) "land predominately used for residential purposes" means only those tracts of land within an unzoned commercial, business, or industrial area on a Primary or Interstate Highway which are occupied by a building regularly and principally used as a residence and those tracts of land adjacent to such residential tracts which are under the same ownership as the residential tracts and which are actively used and maintained for residential purposes. [Acts 1979, No. 735, § 2, p. 1638.]

Compiler's Notes. This section contained no subdivision (b).

76-2505.5. *Time for action on application for outdoor advertising.*

When an application is filed with the Arkansas Highway Commission or the Department pursuant to Section 4 [§ 76-2505] of Article 1 of Act 640 of 1967, or regulations adopted pursuant thereto, for a permit to erect and/or maintain outdoor advertising, the Commission or the Department shall either grant or deny such permit within sixty (60) days from the date on which the application was filed with the Commission or the Department. [Acts 1979, No. 735, § 3, p. 1638.]

76-2505.6. *Procedure in event of conflict.*

In the event that federal statutes, rules or regulations conflict with the provisions of this Act [§§ 76-2505.3 — 76-2505.6], or regulations promulgated hereunder, the Arkansas Highway Commission is hereby authorized to promulgate rules and regulations necessary to comply with federal law after first obtaining the advice of the Arkansas Legislative Council thereon while pursuing, insofar as possible, the legitimate objectives of this Act. [Acts 1979, No. 735, § 4, p. 1638.]

Emergency. Section 6 of Acts 1979, No. 735, read: "It is hereby found and determined by the General Assembly that certain terms used in an agreement relating to outdoor advertising along Interstate and Federal-Aid Primary Highways entered into between the Arkansas Highway Commission and the Secretary of Transportation pursuant to the provisions of Act 640 of 1967, are not adequately defined in the agreement to enable the Arkansas Highway Commission to effectively administer the provisions of said agreement and the provisions of Act 640 of 1967; that the provisions

of Section 4 of Article 1 of Act 640 of 1967 and the regulations adopted by the Commission pursuant to the provisions of said Section relating to the granting of permits for the erection and/or maintenance of outdoor advertising prescribe no time limitations within which the Commission is required to act on applications for such permits and that delay by the Commission in granting or denying such permits may result in serious hardship to applicants; and that this Act should be given effect at the earliest possible date to alleviate said problems. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved April 6, 1979.

76-2506. *Permitted outdoor advertising.*

Nothing contained in this Article [§§ 76-2502 — 76-2512] shall prohibit the erection and maintenance of outdoor advertising signs, displays, and devices consistent with customary use within six hundred and sixty feet (660') of the nearest edge of the right-of-way of Interstate, Primary, and other State Highways designated by the Commission—

(a) Within those areas which are zoned industrial or commercial under authority of the laws of this State; or

(b) Within those unzoned commercial or industrial areas which may be determined by agreement between the Commission and the U.S. Secretary of Transportation;

Neither shall such prohibitions apply to signs, displays, and devices —

(c) Advertising the sale or lease of property upon which they are located; or

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(d) Advertising activities conducted on the property upon which they are located.

(e) Signs, displays and devices which locate, identify, mark or warn of the presence of pipelines, utility lines, or rail lines, and appurtenances thereto; including but no [not] limited to, markers used in maintenance, operation, observation and safety.

(f) All nonconforming motorist services directional signs for which an exemption has been granted by the Secretary of Transportation pursuant to 23 U.S.C. 131 (o). [Acts 1967, No. 640, Art. 1, § 5, p. 1176; 1977, No. 386, § 3, p. 795.]

Compiler's Notes. The bracketed word "not" in subdivision (e) was inserted by the compiler.

Sections 2 and 4 of Acts 1977, No. 386 are complied as §§ 76-2503 and 76-2507.1, respectively.

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76-2507. Removal of nonconforming advertising devices.

Any sign, display or device lawfully in existence along any Interstate or Primary State Highway on the effective date of this Act [June 29, 1967] and which does not conform to the provisions of this Article [§§ 76-2502 — 76-2512] shall be required to be removed by July 1, 1970. Any other sign, display or device lawfully erected which does not conform to this Article shall be required to be removed by the end of the fifth year after it becomes nonconforming under the provisions hereof. [Acts 1967, No. 640, Art. 1, § 6, p. 1176.]

76-2507.1. *Removal of directional signs — Hardship area exemption — Compliance with federal regulations.*

The Arkansas State Highway Commission shall upon receipt of a declaration, resolution, certified copy of an ordinance, or other clear direction from a community, board of county commissioners, municipality, county, city, a specific region or area of the State, or other governmental or quasi governmental agency, that removal of motorist services directional signs would cause an economic hardship in a defined area, shall forward such declaration, resolution, or finding to the Secretary of Transportation for inclusion as a defined hardship area qualifying for exemption pursuant to 23 U.S.C. 131(o). Any such declaration or resolution submitted to the Highway Commission shall further find that such motorist services signs provide directional information about goods and services in the interest of the traveling public and shall request the retention in such specified areas by the state of said directional motorist services signs as defined herein. The State Highway Commission shall thereupon comply with all regulations issued both now and hereafter by the Federal Highway Administration necessary for application for the exemption provided in 23 U.S.C. 131(o), provided such motorist services directional signs were lawfully erected under State law at the time of their erection and were in existence on or prior to May 5, 1976. [Acts 1977, No. 386, § 4, p. 795.]

76-2508. *Authority to remove devices — Just compensation.*

The Commission is authorized and empowered to require the removal of all outdoor advertising signs, dis-

plays, and devices not in conformity with this Article [§§ 76-2502 — 76-2512], which right may be enforced by means of a mandatory injunction or other appropriate remedy; provided, however, that just compensation shall be paid upon the removal of the following outdoor advertising signs, displays, and devices: (a) those lawfully in existence on the effective date [June 29, 1967] of this Act; (b) those lawfully on any highway in this State made a part of the State Highway System on or after October 22, 1965, and before the effective date of this Act; and (c) those lawfully erected on or after the effective date of this Act; which compensation shall be paid for the taking from the owner of such sign, display or device, of all right, title, leasehold, and interest in such sign, display, or device, and the taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays and devices thereon. No municipality, county, or other political subdivision shall remove or cause to be removed any legal outdoor advertising except such outdoor advertising that encroaches upon the right-of-way, without paying just compensation therefore [therefor]. This section shall have no effect on the ability of municipalities, counties or other political subdivisions to regulate or control outdoor advertising on highways and/or arterials which are not part of the Interstate or Federal Aid Primary Systems. [Acts 1967, No. 640, Art. 1, § 7, p. 1176; 1981, No. 923, § 1, p. —.]

Compiler's Notes. The bracketed word "therefor" was inserted by the compiler.

Amendments. The 1981 amendment added the second and third sentences.

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76-2509. *Agreements with the United States.*

As provided by Title 23, United States Code [23 U.S.C.], the Commission is authorized to enter into agreement, which agreement shall reflect customary use in the outdoor advertising industry as determined under section 4 [§ 76-2505] of this Act, with the U. S. Secretary of Transportation to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to those sections of the Federal-aid Interstate and Federal-aid Primary Highway Systems lying in Arkansas, and to take action in the name of the State to comply with such agreement. [Acts 1967, No. 640, Art. 1, § 8, p. 1176.]

76-2510. *Enforcement.*

The General Assembly finds and hereby declares that outdoor advertising signs, displays, or devices which do not conform to the requirements of this Article [§§ 76-2502 — 76-2512], including those for which there was a failure to first secure permits for the erection of such signs, are non-conforming advertising devices; therefore, the right is conferred upon the Commission to enforce the provisions of this Article by means of restraining order, mandatory injunction, or other appropriate remedy for the abatement of such non-conforming advertising devices. [Acts 1967, No. 640, Art. 1, § 9, p. 1176.]

76-2511. *Advertising in safety rest areas.*

In order to provide information in the specific interest of the traveling public, the Commission is hereby authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available

at safety rest areas along the Interstate, Primary and other State Highways designated by the Commission, and to establish information centers in cooperation with the State Publicity and Parks Division at safety rest areas for the purpose of informing the public of places of interest within the State and providing such other information as may be considered desirable. [Acts 1967, No. 640, Art. 1, § 10, p. 1176.]

76-2512. *Unlawful advertising.*

Any advertising device which violates the provisions of this Act [§§ 76-2501 — 76-2521] is hereby declared to be a nonconforming advertising device. The Commission shall give thirty (30) days' notice, by certified mail, to the owner of the land on which such advertising device is located to remove same if it is a prohibited device or cause it to conform to regulations if it is an authorized device. If the owner of the property fails to act within thirty (30) days as required in the notice, the Commission shall remove the advertising device at the expense of the owner of the land. [Acts 1967, No. 640, Art 1, § 11, p. 1176.]